REMARKS

The Office Action mailed November 28, 2003 has been received and the Examiner's comments carefully reviewed. Claims 14 and 19 have been amended. Claims 25-27 have been added. No new subject matter has been added. Claims 7-27 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

Rejections Under 35 U.S.C. §102

I. Jarvis (U.S. Patent 5,685,673)

The Examiner rejected claims 7-13, 22, 23 and 24 under 35 U.S.C. §102(b) as being anticipated by Jarvis (U.S. Patent 5,685,673). Applicants respectfully traverse this rejection.

Jarvis discloses a drill bit 30 with reverse flutes 32, 33. The flutes 32, 33 terminate proximate point 36 in cutting lips 34, 39. The drill bit 30 is designed to drill or cut a bore in bone.

Each of independent claims 7, 22, and 24 recite a device having first and second cutting edges. Claim 7 recites that the device further includes a distracting dimension. Claims 22 and 24 recite that the device further includes first and second distracting surfaces that provide a distracting dimension or distance.

Each of independent claims 7, 22, and 24 recite that the distracting dimension or distance is greater than or larger than a height dimension or distance defined by the cutting edges. Jarvis simply does not disclose a distracting dimension.

The Examiner states that Jarvis does disclose a distracting dimension in FIG. 19, but does not clarify what structure provides for such distraction. "Distracting" or distract is a term of art in the medical industry that means to separate or spread apart. As disclosed in the present specification, rotation of the instrument provides for distraction of the vertebrae adjacent to the disc space. Page 3, lines 2-6. In particular, the distraction dimension of the blade causes the end plates to distract or be forced apart from one another. Page. 8, lines 13-20. The drill bit 30 of Jarvis does not "distract". The drill bit 30 of Jarvis bores a hole that is sized in correspondence to the outer diameter of the drill bit 30.

It is respectfully submit that the Examiner is improperly ignoring a limitation recited in each of the claims. In particular, the Examiner is ignoring the "distracting" limitation.

This limitation is clearly defined in the specification and known to those skilled in the art. This limitation requires some structure or dimension that spreads apart or forces apart, for example, the first and second vertebrae. The drill bit 30 of Jarvis does not spread apart or force apart bones, rather, the drill bit simply bores a hole in the bone.

In the event the Examiner were to characterize the outer diameter of the drill bit 30 as a distracting dimension, it is respectfully noted that the outer edges are cutting edges that cut and do not distract, i.e. force apart two vertebrae. Thus, because the outer diameter edges cut a hole, the drill bit 30 cannot spread apart or force apart the vertebrae a distance greater than the size of the hole cut by the edges. Thus, the drill bit 30 of Jarvis does not distract or have a distracting dimension.

At least because each and every structural limitation has not been met by Jarvis, Applicants respectfully submit that claims 7-13, 22, 23 and 24 are patentable over Jarvis.

II. McGurk-Burleson et al. (U.S. Patent 4,867,157)

The Examiner also rejected claims 14-16 and 21-24 under 35 U.S.C. §102(b) as being anticipated by McGurk-Burleson et al. (U.S. Patent 4,867,157). Applicants respectfully traverse this rejection, but have amended claims 14 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

McGurk discloses a cutting instrument 211 having a helical cutter blade 86. The helical cutter blade 86 has opposing cutting edges 87 and 88 (FIG. 14), and two flutes or channels 90 and 91.

A. Claims 14-16, and 21

Claim 14 has been amended to incorporate subject matter of dependent claim 19 (see also the subject matter of dependent claim 10). Accordingly, no new matter has been added that would require an additional search.

Claim 14 recites a curette including a blade having first and second concave regions, and first and second cutting edges. The curette also includes a collecting element including a collecting surface oriented to face the leading end of the blade.

First, Applicants respectfully submit that if the channels 90 and 91 of McGurk are to be characterized as concave surfaces, the channels cannot also be properly characterized as a

collecting element. The Examiner is improperly using a single structure or element in McGurk as disclosure for two separately recited elements of claim 14.

Nonetheless, Applicants have amended claim 14 to clarify that the collecting element includes a surface oriented to face the leading end of the blade. McGurk simply does not disclose a collecting surface oriented to face the leading end of the blade. If the channels 90, 91 are to be characterized as a collecting element, none of the channel surfaces face the leading end of the blade, as recited in claim 14.

At least for these reasons, Applicants respectfully submit that independent claim 14, and dependent claims 15, 16, and 21 are patentable.

B. Claims 22-24

Claims 22 and 24 each recite a device having a blade with first and second cutting edges. The blade also includes first and second distraction surfaces. Claim 22 recites that a distraction height extends between the distraction surfaces, the height being greater than a cutting height dimension extending between the cutting edges. Claim 24 recites that a second distance separating the distraction surfaces is larger than a first distance separating the cutting edges.

The helical cutter blade 86 of McGurk clearly does not disclose distraction surfaces configured to have a distance or height dimension that is greater than a distance or dimension between cutting edge 87, 88. Rather, the helical cutter blade 86 of McGurk has helical cutting edges 87, 88 about an outer diameter of the blade. The blade does not have distracting structures greater than the helical cutting edges 87, 88, as recited in claims 22 and 24. Applicants therefore respectfully submit that claims 22-24 are patentable.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 17-19 under 35 U.S.C. §103(a) as being unpatentable over McGurk-Burleson (U.S. Patent 4,867,157) in view of Jarvis (U.S. Patent 5,685,673). Applicants respectfully traverse this rejection.

Claim 17-19 depend upon claim 14. In view of the remarks regarding independent claim 14, further discussion regarding the independent patentability of dependent claims 17-19 is believed to be unnecessary. Applicants submit that dependent claims 17-19 are in condition for allowance.

New Claims 25-27

New claims 25-27 depend upon claims 7, 22 and 24 respectively. At least for the reasons discussed above with respect to claims 7, 22, and 24, Applicants respectfully submit that claims 25-27 are patentable.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 7-27) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,

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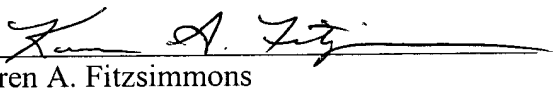

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